

**Elmira College and Elmira College Faculty Guild
affiliated with NEA/NY and NEA, Petitioner.
Case 3-RC-9805**

December 11, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Decision and Order (pertinent portion is attached). The request for review is denied as it raises no substantial issues warranting review.¹

¹ The only issue raised in the request for review is whether the Regional Director erred in finding the faculty at the College to be managerial and, therefore, in dismissing the petition.

APPENDIX

BACKGROUND

The College was founded in 1855 as a private coeducational liberal arts college located on a single campus in Elmira, New York. The College presently has 960 full-time students, and approximately 990 part-time students. The College offers Bachelor of Arts, Bachelor of Science and Associates degrees, as well as a Masters of Science in Education. There is also an extensive continuing education program which offers to part-time students evening courses leading to the award of the above-mentioned degrees. The College offers approximately 700 courses per year and 34 major fields of study. There are approximately 67 full-time faculty and professional librarians at the College. There are approximately 85 part-time faculty members, the majority of whom teach in the continuing education program. Each faculty member is a member of one or more of the College's six faculty divisions. These divisions are: creative arts, business and economics, humanities, math and natural science, professional programs, and social and behavioral sciences.

The chief governing entity of the College is its Board of Trustees, which is comprised of 22 members, including the president of the College, who is the only administrator on the Board; no faculty members serve on the Board. The academic vice president and dean of faculty attends Board meetings but does not sit on the Board. The Board of Trustees is organized into the following committees: executive, academic affairs, budget, development membership, student life and steering. The Board and its committees meet semiannually. The Board of Trustees is charged with the long-term governance and financial stability of the College. The Board of Trustees appoints the president of the College, who is its chief executive officer.

The president is responsible for supervising and directing the affairs of the Elmira College Corporation. The president is specifically charged with the following duties: promote the College to all its constituencies; represent the College at national, regional and local functions, and with alumni, com-

munity groups, parents, and trustees; enlarge the institution's financial resources; exercise prudent stewardship of existing resources; support the growth of academic quality and faculty excellence; and respond to the corporate and individual needs and concerns of administrators, faculty, staff, and students.

There are five vice presidents who constitute the president's cabinet: vice president for public relations; academic vice president and dean of faculty; vice president and treasurer; vice president of development; and vice president and dean of student life. Other principal administrators include the registrar, the dean of the Gannett-Tripp Library, the dean of continuing education, and administrators in the areas of business office, college store and purchasing, physical plant, dining services, administrative data processing, admissions and financial aid, athletics, development, student affairs, and public relations.

The academic vice president and dean of faculty is appointed by the president, with the advice of and in consultation with the faculty, as discussed below. The dean is the chief academic administrator of the College and is directly responsible to the president for the College's academic program. The position has been occupied by Bryan Reddick for the past 6 years. The faculty report directly to the dean of faculty for academic and nonacademic matters.

The College's faculty handbook describes the academic ranks and titles of the faculty. The ranked faculty is defined as including professors, associate professors, assistant professors and instructors. The unranked faculty is defined as including affiliate, visiting and adjunct professors, and lecturers. The faculty handbook states that unranked faculty members are usually part-time employees of the College. The College's bylaws, as quoted in the faculty handbook, summarize the faculty's responsibilities as follows:

The faculty shall devise, subject to the approval of the Board of Trustees or Executive Committee, requirements for admission, conditions of graduation, the nature of degrees conferred, rules and methods for the conduct of the educational work of the College, and shall recommend to the Board candidates for such degrees as shall be granted upon successful completion of prescribed courses of study.

These responsibilities are implemented by the faculty through meetings of the faculty as a whole, the divisional structure and the various faculty committees described below.

Each of the six above-mentioned faculty divisions is headed by a division chairperson, who is responsible for coordinating the activities of the division. The chairperson is a teaching member of the faculty and receives a stipend of about \$2000 for work as a division chairperson. The division chairperson holds a division meeting on a monthly basis. Each division has its own budget or several budgets dedicated to programs within the division. The chairperson is responsible for ascertaining the budgetary needs of the division and apprising the faculty dean of the division's financial needs. The division chairperson acts as a moderator in division meetings, suggests class schedules, the number of sections of a course to offer, and which faculty members should teach them. Division chairs also play a role in tenure, em-

ployment contract renewal, promotion, and hiring decisions, as discussed below.

The six division chairs and the dean of faculty comprise the council of chairs. The council of chairs receives financial information from the College, discusses with the dean the faculty's budgetary needs and makes recommendations to the dean concerning faculty budget priorities within the College's operational budget. The council also makes recommendations to the administration concerning the method of distribution of faculty salary increases, as discussed below. The council of chairs also works with the dean in planning the academic calendar, i.e., when breaks and final examinations will occur, the beginning and end of the academic year, and commencement.

The college faculty sits on a number of standing and ad hoc committees, which participate in various general and specific academic and nonacademic policy decisions affecting the College. There are 11 standing committees: faculty executive committee; faculty review committee; curricular affairs committee; educational standards committee; arts and lectures committee; graduate and advanced studies committee; faculty development committee; fringe-benefits committee; grievance committee; advising committee; and commencement advisory committee. These committees are discussed seriatim below.

Faculty Executive Committee: The faculty executive committee is comprised of four faculty members, elected at large by the faculty, and the dean of faculty. The committee is responsible for obtaining nominations to and conducting elections for positions on the other standing committees. The faculty executive committee is also responsible for appointing faculty to fill unexpected vacancies on other committees, recommends to the college president the establishment of new standing committees or changes in existing committees, prepares the agenda for the monthly, faculty-wide meetings, and publishes the minutes of such meetings.

Faculty Review Committee: The faculty review committee consists of six faculty members elected at large by the faculty and one faculty member appointed by the president of the College. The committee is responsible for establishing, in cooperation with the dean of faculty, evaluative criteria for faculty performance; administering the faculty evaluation system; and making recommendations to the president concerning retention of faculty members during and subsequent to their probation period.

Curricular Affairs Committee: The curricular affairs committee is comprised of eight faculty members elected at large by the faculty, the dean of faculty, the registrar, and one student appointed by the student association. The committee is responsible for establishing standards and procedures for the development of new courses; approving new courses; approving changes in course levels; and for reviewing and making recommendations to the faculty concerning changes in academic programs, and in major and minor fields of study.

Educational Standards Committee: The educational standards committee consists of five faculty members elected at large by the faculty, the dean of faculty and the registrar. The primary responsibility of the committee is to establish and apply the standards for the admission of student applicants to the College, including the College's automatic admission standards, discussed below, which the committee re-

views annually. The committee also reviews student petitions for waivers of academic requirements, is responsible for placing deficient students on probation and for making recommendations to the college president concerning the dismissal of students for poor academic performance.

Arts and Lectures Committee: The arts and lectures committee is comprised of four faculty members elected at large by the faculty and a number of other appointed faculty, administration, and student members. The committee is responsible for arranging and scheduling extra-curricular events on campus.

Graduate and Advanced Studies Committee: The graduate and advanced studies committee consists of five faculty members elected at large by the faculty, and one faculty member appointed by the college president. The dean of continuing education and the associate dean for graduate studies also sit on the committee but do not have voting rights. The committee is responsible for establishing admission and graduation standards for the graduate program. Any course taught in the graduate program must be approved by the committee. The committee also has authority to rule on graduate student petitions seeking waivers of academic requirements.

Faculty Development Committee: The faculty development committee is comprised of five faculty members elected at large by the faculty and the faculty dean. The dean's voting privileges on the committee are limited to issues involving general policies and procedures. The committee is responsible for facilitating the improvement of faculty teaching and advising skills, which it accomplishes through faculty workshops.

Fringe-Benefits Committee: The fringe-benefits committee is comprised of five faculty members elected at large by the faculty. The committee works with college administrators to develop recommendations to the faculty concerning employee fringe benefits, such as medical insurance and pensions, and also makes recommendations concerning such benefits to the College on behalf of the faculty.

Grievance Committee: The grievance committee consists of five faculty members elected at large by the faculty. The committee receives grievances from faculty members regarding their employment and alleged violations of academic freedom. The committee seeks settlement of grievances satisfactory to the grievant and the College. In cases that are not settled, the committee issues a report and findings to the affected parties.

Advising Committee: The advising committee consists of five faculty members elected at large by the faculty, the director of academic advising, the dean of student services, and two students. The committee is responsible for establishing policies and procedures concerning the academic advising of students by the faculty. The committee also establishes a schedule of advising activities for each class and advising skill enhancement activities for the faculty.

Commencement Advisory Committee: The commencement advisory committee consists of the senior member of the faculty, one faculty member elected at large by the faculty, and one faculty member appointed by the college president. The committee advises the president on commencement activities and recommends to the faculty and president nominations for honorary degrees.

Outside of the standing committee structure, faculty members serve on the discipline committee, which consists of two

faculty members elected at large by the faculty, two administrators, and two students. The committee hears allegations of misconduct by students and makes recommendations to the college president concerning sanctions for misconduct. A student charged with misconduct may appeal the committee's decision to the president.

Faculty members also participate in the dean's planning group, which was established by Dean Reddick in 1987. The planning group consists of the dean, the council of chairs, and two members of the curricular affairs committee. The planning group considers and makes recommendations to the dean to fill faculty vacancies and to create new faculty positions.

There are a number of ad hoc committees in which faculty participate. After the dean's planning group makes a recommendation to fill a faculty vacancy or create a new position, and the president accepts such recommendation, the faculty dean, in consultation with the division chairperson in which the opening occurs, forms a faculty search committee consisting of five faculty members to seek out, interview, evaluate, and hire for the position. Other ad hoc committees have included an admissions committee, which made recommendations to the faculty concerning student recruitment; a committee on scholarship, which presented a report to the faculty dean concerning criteria for faculty performance in research and creative work; and various subcommittees of standing committees.

There are approximately 20 faculty members who, apart from their academic responsibilities, serve as directors of a number of college programs. These programs range from the freshman writing program, theater program, greenhouse manager, art department budget director, radiation officer, and junior year abroad program. The program directors receive either a salary supplement ranging from under \$500 to \$9500, or are released from certain teaching responsibilities.

The College Library: The College's library, the Gannett-Tripp Library, is staffed by a director, three professional librarians and a number of other nonprofessional employees. The library director, James Gray, and the three librarians, Elizabeth Wayle, Donna Wertheimer, and Mark Woodhouse, are members of the college faculty and serve on a number of the above-mentioned faculty committees. However, the librarians do not receive academic rank. Petitioner seeks to include the three professional librarians in the petitioned-for bargaining unit.

Elizabeth Wayle is responsible for the library's technical services, including acquisitions and maintaining the card catalog. She directs the work of three nonprofessional librarians. Donna Wertheimer is in charge of government documents (the library is a federal and state government document depository) and oversees reference librarians and an employee who is a government document specialist. Mark Woodhouse is responsible for circulation, periodicals, and library equipment, such as copying machines. Woodhouse directs the work of 2 paraprofessional staff members and approximately 35 work-study students. The three librarians must consult the library director concerning any discipline for work infractions by staff members. Employees seeking time off from work must have the approval of the librarian to whom they report and the director. The three librarians' work performance is reviewed under a procedure set forth in the faculty handbook, which procedure requires participation

in the individual librarian's appraisal by the two other librarians, as well as the library director and a member of the faculty review committee.

The library director is responsible for the general administration of the library, including its budget. Specifically, the director is responsible for making an annual library budget request and for insuring that the library remains within its budget. The budget request is made by the library director to the council of chairs. Upon the approval of the library budget by the council of chairs, the director and the three librarians meet and decide on the allocation of the capital budget to periodicals, reference books, and audiovisual materials. The portion of the budget allocated to books is then further divided by subject field based on a formula applied by the library. The subject field book allocations are then submitted to the council of chairs for approval. After approval of the book allocations by the council of chairs, the library notifies the faculty of the moneys available for books in their field and encourages the faculty to order such books. The council of chairs has never required the library to change the amounts of money allocated for book purchases.

The library director and the three librarians engage in long-range planning for the library, such as recommendations for a new computer system. Such recommendations are made within the budget process. If a vacancy in the library staff arises, the director seeks approval to fill the vacancy and for the position salary from the dean of faculty. The director and the three librarians decide if any changes should be made to the job description for the vacant position and typically function as a search committee for job applicants, which search committee is headed by the librarian whose area of responsibility the vacancy occurs. The librarian heading the search committee has actual authority to hire an applicant and no further administrative approval is required.

ACADEMIC GOVERNANCE

Admissions: Admission of students to the College is controlled by the faculty through their participation on the educational standards committee. The committee sets the standards for automatic acceptance of applicants to the College and reviews the standards annually. Presently, any applicant with a score of 800 or better on the scholastic aptitude test, a grade point average of 80 percent and a ranking in the top 40 percent of his or her high school class will be automatically admitted to the College.

During the period 1987 to 1989, the educational standards committee had final authority on the admission or rejection of applicants not meeting the automatic admission standards. Since 1990, pursuant to an agreement between the educational standards committee, the dean of faculty and dean of admissions, which agreement was approved by the college president, the committee no longer has final authority concerning the admission of questionable applicants. Under the present procedure, if an applicant does not meet the automatic admission standards, the committee reviews the applicant's file and votes on the applicant's admission. In the event that the dean of admissions disagrees with the committee's decision to reject an applicant, the dean may appeal the decision to the college president. In 1990, the record shows that of 220 questionable applicants, 138 were accepted and 82 were rejected by the committee. The dean of admissions appealed 36 of the rejections to the president who sustained

the committee's decision in 21 cases and overruled the committee in 15 cases.

Petitioner presented evidence that the change in the educational standards committee's authority over questionable applicants arose out of the administration's unilateral acceptance for the fall term of 1990 of approximately 100 students whose scholastic aptitude test scores fell below the then automatic acceptance standard of 800. Apparently, only a small percentage of these 100 students had been reviewed and accepted by the committee for admission.

The faculty has played an active role in the recruitment of applicants and the setting of the College's enrollment standard. Pursuant to a report of the faculty's ad hoc admissions committee, the College adopted the committee's recommendation that the minimum student enrollment be 1000 students and that scholarships be used as a recruitment tool for outstanding high school students who did not necessarily qualify for financial assistance. Members of the faculty also volunteer to assist in the admissions office and in the actual recruiting process by interviewing applicants and attending college fairs and high school events.

Transfers and Articulation Agreements: The registrar has final authority to decide whether to accept for credit at the College courses taken at other institutions by a student transferring to the College. If the registrar denies transfer credit, the transfer student may submit additional supportive information on the course. In that event, the registrar requests that a faculty member in the discipline encompassing the course in issue review the material and make a recommendation to the registrar. The registrar always accepts the recommendation of the faculty member. The student's faculty advisor has sole and final authority over whether a certain transfer course satisfies degree or major requirements.

Articulation agreements are agreements between the College and other institutions by which they agree to grant reciprocal academic credit for certain courses. Articulation agreements are negotiated by a faculty member, who consults with the division chairs and curricular affairs committee. These agreements are then executed by the dean of faculty or the college president.

Curriculum and Degree Requirements: Courses offered by the College are developed by the faculty without the involvement of the administration. Proposals for new courses originate from individual faculty members and divisions and final authority to add a course to the curriculum and to set the course credit hours rests with the curricular affairs committee. The committee also has final authority over changes in course content, whether a particular course satisfies the College's general educational requirements, and the course level and credits.

The curricular affairs committee also is responsible for reviewing and making recommendations to the faculty concerning changes in academic programs, and in major and minor fields of study. The recommendations of the faculty in this regard are then passed on to the college president for his final approval. During the 4-year tenure of the College's current president, all such recommendations were approved by the president. However, during the 1982–1983 academic year, according to the then chairperson of the curriculum affairs committee, the College's president announced the creation of a core curriculum for all students, which had not been voted on by the committee or the faculty at large. The

proposal had been discussed by a faculty committee created by the academic dean during a review of the College by the Middle States Association Commission on Higher Education, a nonprofit association serving educational institutions through programs of evaluation and accreditation. Additionally, in 1985, the then college president did not approve a faculty recommendation eliminating field experience as a general degree requirement.

The approval of degree candidates is based on the recommendations of the faculty at large to the college president. The record evidence shows that the president has invariably accepted the recommendations of the faculty in this regard during the past 4 years.

Grading, Class Size and Scheduling: All student grading decisions are left to the individual faculty members. However, a student may appeal an individual faculty member's grading decision to the education standards committee.

Course scheduling originates in the faculty, although the faculty divisions, and is then communicated by the division chairpersons to the registrar's office where the schedules are recorded and published.

Presently, the College has a general minimum enrollment standard for a course to be taught of 10 students in an undergraduate course and 7 students in a graduate course. The origin of the minimum enrollment standard is unclear. Restrictions on the maximum class size for an individual course are decided by each division's faculty, and the class size limitations are then reported to the registrar's office by the division chairperson at the same time that class schedules are reported. In 1988, the advising committee issued a memorandum complaining to the dean of faculty that the registrar's office had set class size limitations without consulting with the faculty. According to Dean Reddick, who acknowledged the problem, procedures were subsequently put in place to insure that the registrar's office did not unilaterally establish class sizes, and the problem has not reoccurred.

Student Retention and Discipline: Decisions concerning the retention and dismissal of students at the College are made by the educational standards committee. The committee reviews the progress of each student towards fulfilling degree requirements and has the final authority to place a student on probation for poor academic performance. A student's only recourse concerning the committee's decision is to appeal to the committee for reconsideration.

Students may be dismissed from the College for poor academic performance pursuant to the recommendation of the educational standards committee to the college president. In 1990–1991, the committee recommended that 18 students be dismissed; the president sustained 17 of these recommendations.

Students may also be disciplined for misconduct by the College disciplinary committee, which consists of two students, the dean of faculty, the dean of student life, and two faculty members elected at large by the faculty. A student may appeal a decision of the committee to the college president. The committee hears cases affecting approximately 50 students a year. In 1990, the college president modified the discipline imposed by the committee on two students. No other decision of the committee has been modified by the president since at least 1986, when Dean Reddick joined the committee.

Advising Programs: As noted above, faculty members serve as directors of a number of College programs, including such academic programs as the student advising program and the freshman advising program. The advising programs were developed by and are administered through the faculty-dominated advising committee. All faculty participate in the advising program. The director of the advising program, a faculty member, is in charge of all aspects of the freshman program. The director selects the advisors for the freshman advising program, assigns students to each advisor and is in charge of all program activities.

NONACADEMIC MATTERS

Faculty Hiring: The faculty participates in the hiring of full-time faculty through the dean's planning group and the faculty search committees. After the dean's planning group makes a recommendation to fill a faculty vacancy or create a new position, and the president accepts such recommendation, the faculty dean, in consultation with the division chair of the division in which the opening occurs, forms a faculty search committee, as required by the college faculty handbook. The search committee consists of five faculty members; administrators do not sit on the search committee.

The search committee solicits applicants for the position through advertisements in national academic journals. The faculty dean composes and places the advertisement for candidates after consulting with the planning group, search committee, search committee chairperson, or division chairperson. The job salary range is determined by the dean, after consulting with the college president; the dean also may consult faculty members in setting the advertised salary range. The applications received are reviewed by the search committee, which ranks the top candidates. The dean schedules interviews with the top candidates, who are then invited to the campus where they are interviewed by the members of the search committee, and by the dean and college president. The search committee chairperson reports to the dean the committee's opinion of the candidate. After the top candidates have been interviewed, the committee makes a recommendation to the dean concerning which applicant should be offered the position. The college president has the final authority to decide whether to hire a candidate.

In the past 4 academic years, 27 full-time faculty have been hired, all on the recommendation of the search committees. The faculty search committees' recommendations for candidate selection have been rejected by the president on only one occasion since 1987. In that instance, the candidate ultimately selected by the president declined the offer. Also, on another occasion, the dean of faculty unilaterally disregarded the recommendation of the dean's planning group in deciding to fill a faculty vacancy. Specifically, in 1990, the dean of faculty ignored the planning group's recommendation to fill a vacant sociology position and instead decided to fill a vacant director of education position.

The process of hiring part-time faculty differs from that of hiring full-time faculty, and also differs for the type of part-time appointment, i.e., to the general education undergraduate or continuing education programs, specific smaller programs such as the freshman writing and education programs, or the graduate degree program. There is no search committee procedure for the hiring of part-time faculty. In the continuing education program, hiring of part-time instructors is

accomplished in several ways. The dean of continuing education screens applications for part-time instructors and passes these on to the appropriate division faculty. The division faculty may take the initiative and interview and extend offers of employment to part-time instructors, the dean of continuing education may extend offers of employment on her own initiative, or the dean and the faculty may work in conjunction in hiring for the program. Part-time faculty are hired by the faculty approximately 25 percent of the time, while the dean of continuing education, without faculty involvement, hires about 1 to 2 percent of the time. The salary range for part-time faculty is set by the administration. The administration is responsible for the execution of the employment contract with the part-time instructor.

In the graduate program, hiring of part-time faculty is done through the graduate and advanced studies committee. The committee is responsible for interviewing applicants and has final authority to hire for the program. In the past 4 academic years, the committee has hired 32 part-time faculty members. As in the continuing education program, salaries and the execution of the employment contract are under the control of the administration.

A number of the faculty program directors have and exercise the authority to effectively recommend the hiring of part-time instructors for their programs. For instance, the recommendations of the director of the freshman writing program concerning the hiring of part-time instructors have invariably been adopted by the dean of faculty. The directors of the education program and nursing diploma program, and the professional librarians also recruit and effectively recommend the hiring of part-time instructors and staff.

Tenure and Promotion: Faculty promotions, including promotion to the rank of full, tenured professor, are governed by traditional criteria. A review of faculty for tenure and retention is accomplished through procedures set forth in the faculty handbook. The faculty review committee, which consists solely of faculty members, advises the college president whether a faculty member should be retained as a college employee and whether that individual should receive tenure. The committee typically conducts a first year review of faculty members, a midtenure review, and a tenure review. While the dean of faculty and the division chairperson provide the committee with written evaluations of the candidate, no administrator, including the dean of faculty, participates in the committee's deliberative process or in its recommendation. The committee's recommendation is sent to the college president, who, with the approval of the Board of Trustees, makes the final decision to grant tenure.

The president has accepted the committee's recommendation concerning tenure and retention in 45 out of 46 reviews in the past 4 academic years. There is evidence that in 1986, in one instance, the president overruled the committee's recommendation and granted tenure to a faculty member. Also, there is evidence that the president did not adhere to the committee's tenure recommendation concerning another faculty member; however, the record does not identify when the latter decision occurred.

The faculty plays a far less substantial role in the promotion in rank of faculty members. The faculty review committee has no jurisdiction regarding promotions. Rather, the college president, in making his final decision concerning a nomination for promotion (candidates for promotion are self-

nominated), relies on the recommendations of the dean of faculty, the division chairperson, and the tenure and retention file compiled by the faculty review committee. In the past 4 academic years, 30 faculty members have been nominated for promotion and 12 have been promoted. In this regard, the record reveals that the recommendations of the dean have invariably been followed by the president.

Decisions denying promotion to a faculty member may be grieved through the faculty grievance committee. As described above, the committee issues a report to the affected parties where no settlement is reached, but does not have authority to issue a binding decision on a grievance. The grievance committee heard and issued a report in 1990–1991, concerning the grievance of a faculty member denied a promotion to full professor. The grievance alleged that the faculty member had been denied a promotion because the administration had unilaterally altered the criteria for promotion, as set forth in the faculty handbook. The grievance committee found that the administration had failed to follow the criteria for evaluation for promotion in several regards and made recommendations to the president concerning these issues. The president rejected most of the committee's recommendations and refused to reverse his denial of promotion decision.

Faculty Salary and Benefits: The faculty generally has no authority in determining salaries paid college employees. However, the council of chairs makes recommendations to the administration as to how salary increases authorized by the administration should be distributed to the faculty. In this regard, the dean of faculty has advocated that salary increases be awarded to faculty based on merit, while the council of chairs has opposed merit increases and rather has sought across-the-board raises. The college president has consistently approved the latter method of salary increases. However, in 1988–1989, the faculty received a 4-percent raise, which was distributed to individual faculty members with some small variations based on years of service and academic rank. While the dean consulted with the council of chairs concerning the criteria for the adjustments, the dean did not discuss with the council the specific variations in raises each faculty member received.

The faculty has no authority in determining employee fringe benefits. However, the faculty fringe-benefits committee, on behalf of the faculty, makes recommendations to the administration concerning fringe benefits. The committee has made a number of significant proposals concerning fringe benefits that were either adopted by the administration or resulted in the implementation of compromise plans. Thus, the committee recommended and the College implemented a plan allowing employees to cover medical insurance premiums with pretax salary. The formula used to calculate employee medical insurance premiums was developed by the committee and uses cost data furnished the committee by the college treasurer. The committee has effectively recommended that the College hire a benefits consultant and the particular consultant hired was suggested by the committee. The College has implemented, pursuant to the recommendations of the committee, a plan allowing employees to contribute pre-tax salary to a fund to cover uninsured medical expenses. The college president has accepted a committee proposal concerning a change in the amount of pension fund contributions made by the College for faculty members.

Also, the committee has raised concerns with the administration that the College was delaying in making monthly pension fund contribution deposits. The committee's complaint resulted in a pledge by the administration to deposit such contributions by an earlier date each month.

Clearly, however, the administration's control over salary and fringe benefits has resulted in the rejection by it of a number of faculty proposals. For instance, the faculty's complaint that a switch in paydays resulted in a loss of salary to the faculty was not redressed by the administration. Other proposals concerning the employee medical and pension plans have been rejected by the administration.

Tuition and Budget: The faculty does not have authority or input in setting tuition at the College. However, in 1986, the educational standards committee and the faculty effectively recommended to the administration that scholastically successful students be allowed to take courses in excess of a standard course load without paying tuition for such additional course credits. Previously, students who were permitted to take additional courses were charged additional tuition for such courses.

Through the council of chairs and the individual division chairs, the faculty has some, albeit limited, control and input concerning the college budget. As noted above, each division chairperson is responsible for ascertaining the budgetary needs of the division and apprising the faculty dean of the division's financial needs. Each division has control over spending within its own budget. However, the total of each division's budget is a small fraction of the College's total budget. Moreover, a large portion of each divisional budget typically includes such nondiscretionary spending items as copying supplies and postage.

The dean of faculty also requests that each division chairperson rank the priorities of academic capital projects each year. These projects include such items as the purchase of faculty office equipment, an audiometer, and repairs to science equipment. Those capital projects ranked highest by the division chairs in 1988 were funded in that year's capital budget.

Faculty Governance—Other Issues: Petitioner relies on letters from the Middle States Commission on Higher Education, an accreditation body described above, to establish a lack of faculty participation in the governance of the College. A 1984 letter from the Commission requested a report from the College concerning, inter alia, the degree of faculty participation in governance. A letter from the Commission in 1987 appears to indicate, albeit unclearly, that some of the concerns in the 1984 letter remain unaddressed. In any event, a letter to the college president from the Commission dated March 16, 1990, states that the Commission accepted the annual report of the College and "commend[s] the College on participatory processes now in place."

In evidence is a document prepared by the College for the hearing which shows that, during the academic years 1987 through 1991, the faculty, at the monthly faculty meetings, made by motion 89 recommendations to the college president, of which 74 were accepted and 13 were rejected by the president. The Petitioner asserts that many of the recommendations accepted by the president pertained to subjects that were exclusively functions of the faculty, did not involve any economic costs, or were minor procedural issues. An examination of these accepted recommendations, however,

shows that they involve a wide variety of issues, including such significant issues as changes to majors and minors or the elimination of an associates degree program. Moreover, the fact that many of the recommendations accepted by the president involved matters within the academic purview of the faculty establishes that the faculty has effective authority concerning such academic matters. Concerning the 13 recommendations rejected by the president, half of these recommendations involved financial, rather than academic, matters.

Faculty members have participated in the hiring of nonfaculty college administrators. The present registrar was hired upon the recommendation of a faculty-dominated search committee established by the dean of faculty. The council of chairs was involved in search committees in 1988 and 1989 to hire a dean of continuing education. Five faculty members also served on a committee to hire a director of nurse education. A similar committee effectively recommended the hiring of the dean of admissions. A faculty member served on a steering committee with the college president, dean of faculty, and three trustees, which committee was formed to hire the vice president of development; during the search for a vice president, the council of chairs and the faculty executive committee interviewed the job candidates. A faculty search committee was involved in hiring Dean Reddick, who was interviewed during his candidacy by a number of faculty committees.

ANALYSIS AND CONCLUSIONS

In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the Supreme Court found that the faculty members were managerial employees excluded from coverage of the Act. It defined managerial employees to be those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *Id.* at 682, quoting from *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974). The Court held that managerial employees "must exercise discretion within, or even independently of, established employer policy and must be aligned with management." *Id.* at 683. Managerial employees represent "management interests by taxing or recommending discretionary actions that effectively control or implement employer policy." *Ibid.*

The Court found that the faculty of Yeshiva, through participation in meetings and committees, determined each school's curriculum, academic calendar, course schedules, admissions and matriculation standards, teaching methods and grading policies, and sometimes determined tuition, the size of the student body, and the location of a school. The Court concluded that the faculty's control of academic matters was absolute. In nonacademic areas, the Court found that the faculty played a predominant role in decisions on faculty hiring, tenure, sabbaticals, termination, and promotion. Although the final decisions on these personnel matters were made by the administration, the Court noted that, at least in some of the schools, budget requests were made by the senior professor in each subject area and received the administration's "perfunctory" approval "99 percent" of the time. 444 U.S. at 675 fn. 3. The Court was not persuaded by the fact that faculty decisions were subject to veto power in the administration, which was rarely exercised. *Id.* at 683 fn. 17. In concluding that the Yeshiva University faculty were man-

agerial employees, the Court relied primarily on their extensive authority over academic affairs, but also noted their predominant authority in nonacademic matters.

Recent Board decisions have applied the Supreme Court's analysis in *Yeshiva* to determine whether college and university faculty members are managerial employees in diverse faculty settings. For example, in *Livingstone College*, 286 NLRB 1308 (1987), the Board found faculty members to be managerial employees where they exercised substantial authority over curriculum, degree requirements, course content and selection, graduation requirements, matriculation standards, and scholarship recipients. The faculty members participated in academic governance through membership on various standing committees and by virtue of a faculty-wide vote on recommendations proposed by these committees. Generally, recommendations approved by the faculty were implemented. The Board placed only limited significance on the fact that the faculty had virtually no input into nonacademic matters such as the budget process, tenure decisions, selection of administrators, and no authority in the hiring and firing of faculty. See also *University of Dubuque*, 289 NLRB 349 (1988).

In *University of Dubuque*, the Board found the faculty members to be managerial employees based on their minority involvement on combined committees, their substantial role in curriculum and academic policy decisions, and based on an extant collective-bargaining agreement which gave "the faculty . . . the exclusive right to set student grading and classroom conduct standards; set degree requirements; recommend earned degree recipients; initially receive and consider new degree programs; and develop, recommend and ultimately approve curricular content and course offerings." *Id.* at 350. In addition, while noting that it was of "less significance," the Board found that the faculty's minority involvement on certain other committees allowed them effectively to recommend discretionary actions with respect to a number of nonacademic areas of governance, including department staffing, budgeting, long-term planning, and personnel actions pertaining to faculty members (hiring, promotion, and tenure decisions).

In *American International College*, 282 NLRB 189 (1986), the Board found the faculty to be managerial even though they had no meaningful involvement in fashioning or implementing admissions policies and no meaningful input into the decision-making process with respect to certain nonacademic matters. The Board emphasized that numerous members of the faculty were extensively involved in making curriculum and academic-policy decisions on an on-going basis. The record evidence showed that the faculty participated in college-wide, and more narrowly composed, committees which, on their own initiative, frequently took action with respect to such issues as whether to modify course requirements, add or delete course offerings, establish major fields of study, determine course content, and schedule classes. These committees were extremely active and productive. It was clear, therefore, that the faculty at American International functioned as managers to a significant degree with respect to matters that were central to the business in which the school was engaged. In addition, the Board found that the faculty effectively controlled or exercised considerable influence over such nonacademic matters as hiring, evaluating, and promoting faculty members.

In *Boston University*, 281 NLRB 798 (1986), the Board held that the department chairpersons and full-time faculty were managerial employees. The Board found that the Boston University faculty exercised effective control over matriculation requirements, curriculum, academic calendars and course schedules, and had absolute authority over grading, teaching methods, graduation requirements, and student discipline. The Board also noted that the faculty played an effective role in recommending faculty hiring, tenure, promotions, and reappointments, and that faculty decisions on all policy matters were effectuated in the great majority of instances.

By contrast, in *Bradford College*, 261 NLRB 565 (1982), the Board held that the faculty members were nonmanagerial, where governance documents indicated that they had substantial authority, but where in practice they had little. The Board found that the faculty did not effectively determine teaching loads, salaries, budget, the filling of administrative positions, faculty evaluations, or certain faculty personnel actions. The Board also found that the administration had canceled an academic session without faculty approval, had sometimes altered grades given by faculty members, and at least in some cases, had failed to follow faculty recommendations for the hiring of new faculty members. In determining that that faculty lacked effective authority, the Board considered an accrediting agency's report that reviewed the administration's disregard for stated procedures and for faculty participation in the administration of the college. The Board concluded:

In sum, while the faculty and division chairs have the written right to make recommendations, the record shows that such recommendations were often ignored or reversed by the president, by the academic dean, or by both with respect to curriculum, admission policies, graduation of students, course loads, course scheduling, grading of students, faculty hiring or retention, tuition, and faculty salaries. Id. at 566-567.

In *Florida Memorial College*, 263 NLRB 1248 (1982), the Board found the college's faculty members to be nonmanagerial employees. The Board noted that the various standing committees had generally been granted little authority and did not meet regularly. The curriculum was not within the faculty's absolute control, as all decisions involving course offerings had to be approved by the academic council (almost one-half of the voting members of the academic council were administrators), and the curricular proposals had to be approved by the board of trustees or the dean of academic affairs. The Board also noted that the faculty had no effective control over admissions policy, graduation requirements, or matters relating to the retention, suspension, probation, or expulsion of students.

The above-described Board decisions clearly establish that the college faculty are managerial employees within the Supreme Court's definition in *Yeshiva*. More particularly, the faculty here exercise far greater prerogatives with respect to academic matters than did the faculty in *University of Dubuque* or *Livingstone College*, supra, as the faculty committees here which deal with these matters are comprised predominantly, and, in some cases, exclusively, of faculty representatives.

Thus, college curriculum is established by the faculty. Proposals for new courses originate with individual faculty members, and final authority to add a course to the curriculum and to set the course credit honors rests with the curricular affairs committee. The committee also has final authority over changes in course content, the course level, whether a particular course satisfies the College's general educational requirements, and over individual students' petitions for waiver of academic requirements. The faculty also effectively controls changes in academic programs, and in major and minor fields of study. The faculty, either through individual faculty members, divisions, or committees comprised predominantly or exclusively of faculty members, exercises broad prerogatives in the approval of degree candidates, student grading, course scheduling, class size, number of course sections, student advising, certain aspects of transfer course accreditation, and student retention and discipline relating to academic performance.

Moreover, academic programs such as educational instruction, speech and hearing clinic, theater, junior year abroad, freshman writing, graduate reading, human services, nursing, and medical technology, are supervised by directors who are all faculty members. In this regard, Petitioner's reliance on *Lorretto Heights College*, 264 NLRB 1107 (1982), is misplaced. In *Lorretto Heights College*, the Board found faculty members to be nonmanagerial, where program directors largely controlled the budget, served in key positions on committees, and were administrators rather than instructors. However, here, the college faculty members are not directly involved in decision making on the budget and, in academic matters, the faculty's expertise is relied on heavily, as reflected in the composition of the academic committees and in academic decision-making.

Admission of students to the College is controlled by the faculty through their participation on the educational standards committee. The committee sets the standards for automatic acceptance of applicants to the College, by which method the majority (86 percent in 1990) of applicants are accepted, reviews all questionable applicants for admission, and makes effective recommendations concerning the admission of a majority of these applicants. Cf. *American International College*, 282 NLRB 189 (1986), in which the Board found the faculty to be managerial despite their lack of control over setting or applying admissions standards. The faculty also effectively participates in determining the academic status of transfer students and whether students will receive credit for coursework at other institutions.

Without more, the nature of faculty involvement with respect to academic matters conclusively establishes their status as managerial employees under the foregoing case authority. In addition, however, the faculty here exercise considerable managerial authority concerning significant personnel matters affecting faculty members, with the exception of salaries and nontenure promotions. The faculty effectively determines the hiring of full-time faculty and, concerning the hiring of part-time faculty, has a varying degree of authority ranging from full, final authority in some programs to effective recommendations in other programs. The faculty effectively determines which faculty members will receive tenure. Indeed, the faculty also effectively participates in the hiring of academic deans and other administrative officials. Through the council of chairs, the faculty has determined the

method by which the faculty will receive salary increases. The faculty has been effective in recommending changes in such significant benefit terms as medical insurance and pensions. Each division has control over its own budget or budgets, and the division chairpersons have been effective in establishing priorities in the funding of capital projects. Moreover, the council of chairs has control over the library's capital budget. Thus, the facts establish that the college faculty has a role in nonacademic matters similar to that of the faculty found to be managerial in *American International College*, supra, and has a far greater role in nonacademic matters than did the faculty found to be managerial in *Livingstone College*, supra.

While there are facts on the record that indicate a lack of managerial status, I do not find these considerations controlling. Most of these issues fall outside the crucial matters of academic governance considered dispositive by the Supreme Court in *Yeshiva*. The administration has bypassed the faculty in recent times in making a decision about, most prominently, the automatic admission standards. While the administration, during the 1989–1990 academic year, unilaterally may have lowered the scholastic aptitude test standard and admitted questionable applicants without the approval of the faculty, the result of the controversy was the acknowledgement by the administration, by written agreement, that every questionable applicant must be reviewed by the faculty educational standards committee. Moreover, the administration, by such agreement, acknowledged the faculty's authority to set the automatic admission standards, by which most stu-

dents are admitted to the College. Concerning the creation of a core curriculum in 1982–1983 without a vote by the faculty, and the refusal of a past college president in 1985 to approve the faculty's recommendation to eliminate field experience as a general degree requirement, I note that both matters are remote in time, took place under different top administrators and appear isolated in nature.

To be sure, the college faculty does not participate in promotion decisions exclusive of tenure and, in a few instances, has been overruled in hiring decisions. Also, the faculty has only a limited voice in administrative decisions involving salary or benefits or the budget process. However, as noted by the Supreme Court, a lack of participation in such nonacademic matters, or the occasional veto of faculty action by the administration, "in no way detract[s] from the institution's primary concern with the academic responsibilities entrusted to the faculty." *Yeshiva*, 444 U.S. at 688 fn. 27.

Finally, of great significance is the recent statement by an outside party, the Middle States Commission on Higher Education, commending the College on the "participatory processes now in place," to insure faculty participation in governance. Cf. *Bradford College*, supra at 566, in which the Board, in finding the faculty to be nonmanagerial, relied, in part, on a finding by an outside accreditation body of a lack of participation by the faculty in academic decision-making.

In view of the foregoing, and the record as a whole, I find that the unit sought by Petitioner is composed of managerial employees. Accordingly, I shall dismiss the petition.